

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**October 16, 2012**

**Elisabeth A. Shumaker  
Clerk of Court**

In re:

KEVIN JAMES O'MARA,  
  
Petitioner.

No. 12-4177  
(D.C. No. 2:12-CV-00339-DB-EJF)  
(D. Utah)

**ORDER**

Before **TYMKOVICH, EBEL**, and **GORSUCH**, Circuit Judges.

Petitioner Kevin James O'Mara filed the instant petition for writ of mandamus seeking an order directing the district court to rule on a motion for appointment of counsel that had been pending for some time. While the petition was in the mail, the magistrate judge denied the motion. Consequently, the petition is moot in this respect.

The petition also requests that we grant Mr. O'Mara an extension of time in which to effect service on defendants in the action below. That is a matter properly sought in the first instance from the district court pursuant to Fed. R. Civ. P. 4(m), which Mr. O'Mara has not done. The availability of mandamus relief rests on three conditions: (1) "the party seeking issuance of the writ must have no other adequate means to attain the relief he desires"; (2) "the petitioner must demonstrate that his right to the writ is clear and indisputable"; and (3) this court "must be satisfied that

the writ is appropriate under the circumstances.” *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1187 (10th Cir. 2009) (internal quotation marks omitted). Under the circumstances, Mr. O’Mara’s request for an extension of time to effect service of process cannot satisfy these conditions.

Accordingly, the petition is DISMISSED insofar as it concerns the ruling on the motion for appointment of counsel, and the petition is DENIED insofar as it concerns the extension of time for service. Mr. O’Mara’s motion for leave to proceed in forma pauperis in this court is GRANTED.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", written in black ink on a light blue grid background.

ELISABETH A. SHUMAKER, Clerk